

REMARKS

Claims 47-49, 93-124, and 178-199 were pending in the present application. By virtue of this response, claim 117 is amended for clarification. Accordingly, claims 47-49, 93-124, and 178-199 are currently under consideration.

The Examiner has stated in the present Office Action that claims 47-49 and 93-124 were pending in the present application. In the previous response filed on April 5, 2004, Applicants added new claims 178-199. Applicants respectfully request that the Examiner enter and consider these new claims if they have not been entered.

With respect to all amendments and cancelled claims, Applicants have not dedicated or abandoned any unclaimed subject matter and moreover have not acquiesced to any rejections and/or objections made by the Patent Office. Applicants reserve the right to pursue prosecution of any presently excluded claim embodiments in future continuation and/or divisional application.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

Reference submission

Applicants submit for consideration U.S. Patent No. 6,686,200 which is listed on the attached Form PTO/SB/08a/b. Applicant would appreciate the Examiner initialing and returning the Form PTO/SB/08a/b, indicating that the information has been considered and made of record herein.

Supplemental Information Disclosure Statement

Applicants note that Applicants have not received initialed PTO-1449 form submitted with Supplemental Information Disclosure Statement on September 27, 2004. Applicants respectfully request the Examiner initial the PTO-1449 form.

Objections and rejections withdrawn

Applicants thank the Examiner for withdrawing objection to claim 29 and claims rejections under 35 U.S.C. §112, second paragraph and 35 U.S.C. §103(a).

Nonstatutory double patenting rejection

Claims 47-49, 93, 94, and 96 are rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 126, and 159-162 of allowed U.S. Patent Application No. 09/526,333 (now U.S. Patent No. 6,566,118). The Examiner states that although the conflicting claims are not identical, they are not patentably distinct from each other because AAV is cultured under osmotic sub-lethal stress and not lysed.

Without acquiescence to the rejection and in the interest of expediting prosecution, Applicants respectfully note that a terminal disclaimer over U.S. Patent No. 6,566,118 and a statement under 37 C.F.R. §3.73(b) are filed with this amendment. Applicants respectfully request that the Examiner withdraw the rejection.

Claims 47-49, 93, 94, 96, 117, and 118 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claim 118 of copending Application No. 10/016,767. The Examiner states that these claims are drawn to a method of generating a population of rAAV by culturing the producer cells under sub-lethal stress. The Examiner states that because of the open language of the instant claims, they encompass material included in the copending claim 118, and the limitation of the cancelled claim 117 in the other application has been included in claim 118.

Without acquiescence to the rejection and in the interest of expediting prosecution, Applicants respectfully note that a terminal disclaimer over U.S. Application Ser. No. 10/016,767 and a statement under 37 C.F.R. §3.73(b) are filed with this amendment. Applicants respectfully request that the Examiner withdraw the rejection.

CONCLUSION

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no.226272003311. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

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